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August 29, 2000

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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AUG 30 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation in WT Docket No. 99-217 and CC Docket No. 96-98

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206, endorsed are two copies of a letter and memorandum submitted as an ex parte communication in WT Docket No. 99-217 and CC Docket No. 96-98.

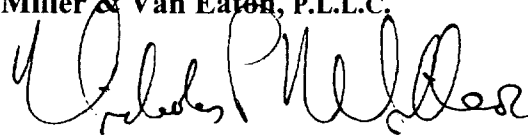
The materials respond point by point to the August 21, 2000 ex parte submission by the Smart Building Policy Project.

Please contact the undersigned with any questions.

Very truly yours,

Miller & Van Eaton, P.L.L.C.

By


Nicholas P. Miller

cc: Chairman William Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani



RealAccess ALLIANCE

Building Owners and
Managers Association
International

Institute of Real Estate
Management

International Council
of Shopping Centers

Manufactured Housing
Institute

National Apartment
Association

National Association
of Home Builders

National Association
of Industrial and
Office Properties

National Association
of Real Estate
Investment Trusts

National Association
of Realtors

National Multi Housing
Council

The Real Estate
Roundtable

August 30, 2000

Via Hand Delivery

The Honorable William Kennard
The Honorable Susan Ness
The Honorable Harold Furchtgott-Roth
The Honorable Michael Powell
The Honorable Gloria Tristani
Federal Communications Commission
445 12th Street, N.W.
Washington, D.C. 20554

Re: *Promotion of Competitive Networks in Local Telecommunications
Markets*, WT Docket No. 99-217 and CC Docket No. 96-98

Dear Mr. Chairman and Commissioners:

The Real Access Alliance (the "Alliance") has recently expressed its commitment to developing a set of model building access agreements and associated "best practices." As indicated in our July 13 letter to Chairman Kennard, these commitments are aimed at ensuring that the occupants of multi-tenanted buildings enjoy swift access to an array of competitive telecommunications services. In short, despite the Alliance's strongly held view that any effort by the government to mandate access to multi-tenanted buildings is unnecessary, unworkable and unconstitutional, we have moved forward with this non-regulatory initiative in hopes of finding common ground. The primary focus is on our tenant/customers' demands for competitive telecommunications services. We are disappointed by recent letters from the Smart Buildings Policy Project (SBPP), rejecting our consumer-oriented, free-market solutions.

We have discussed our current thinking on these commitments with Federal Communications Commission staff (*see* August 14 *ex parte* letter from Kathy Wallman) as well as with members of the SBPP. In fact, some of the approaches under development — including the idea of reflecting specific commitments in enforceable lease terms — derive from those discussions. Nonetheless, as the Alliance begins to roll out its consumer-focused initiative, our effort has been the subject of blanket criticism from the very industry sector that stands to benefit most (*See* SBPP correspondence dated July 18 and August 21). The attached memorandum responds to that criticism in some detail. In the end, we believe that the SBPP's recent statements show that their ultimate loyalty lies with a traditional, centrally managed command-and-control regulatory regime, and not with consumers. As we have indicated in the past, in our view, such a regime would amount to nothing more than a discredited and unwarranted form of corporate welfare.

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We respectfully urge the Commission to see the SBPP's complaints for what they are — an overheated and unreasonable effort to discourage the Alliance from pursuing a promising non-regulatory approach to the issues in this docket. With the support and encouragement we have received from many quarters, including key legislators (*see e.g.*, recent correspondence from Reps. Tauzin (R-LA) and Dingell (D-MI)), we are encouraged that our present course of action is the correct one. We merely ask that the Commission allow a reasonable amount of time for these good faith efforts to bear fruit and forbear, in the meantime, from precipitous and ill-advised regulatory action.

Very truly yours,

The members of the Real Access Alliance:

Building Owners and Managers Association International

Institute of Real Estate Management

Manufactured Housing Institute

National Apartment Association

National Association of Home Builders

National Association of Industrial and Office Properties

National Association of Real Estate Investment Trusts

National Association of Realtors

National Multi Housing Council

The Real Estate Roundtable



RealAccess ALLIANCE

Building Owners and
Managers Association
International

Institute of Real Estate
Management

International Council
of Shopping Centers

Manufactured Housing
Institute

National Apartment
Association

National Association
of Home Builders

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National Association
of Real Estate
Investment Trusts

National Association
of Realtors

National Multi Housing
Council

The Real Estate
Roundtable

MEMORANDUM

August 30, 2000

TO: Federal Communications Commission

FROM: Real Access Alliance

RE: *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217 and CC Docket No. 96-98

As you know, the Real Access Alliance (the "Alliance") recently made certain commitments to the Federal Communications Commission ("FCC" or "Commission"), under which the real estate industry would voluntarily adopt practices aimed at addressing the Commission's concerns. See July 13 *ex parte* letter to Chairman Kennard. In a letter dated August 21, 2000, the Smart Buildings Policy Project ("SBPP") objected to our proposal and to various possible details of its implementation. In doing so, SBPP claimed to be concerned with providing "consumer choice." SBPP's rejection of our consumer-oriented proposal, however, shows that SBPP's true goal is not "tenant choice," but a free ride for its members.

SBPP is asking the Commission to adopt a form of corporate welfare, in which the FCC would force the real estate industry to subsidize the telecommunications industry, ultimately at the expense of building tenants. The regulatory proposals before the Commission would effectively transfer the marketing costs of telecommunications providers to building owners. In fact, SBPP's position is fundamentally anti-competitive: the proposed rules would limit future competition by giving current providers an absolute right to get into buildings first, thereby letting them build market share and entrench themselves. The economics of the telecommunications industry limits the number of providers who can serve a building profitably, so once that limit has been reached for any given building, latecomers, who may offer a superior service for a particular building, will be forced to go elsewhere.

SBPP represents some of America's largest corporations, including AT&T and WorldCom, as well as newer but well-capitalized and successful companies such as WinStar and Teligent, not to mention influential telecommunications industry lobbying groups. These companies dwarf the average real estate firm in size and financial resources, yet they are asking for the government to give them a leg up. This is understandable — the business world is a tough, competitive place, and we all want every advantage we can get — but it does not mean that what SBPP asks is reasonable, necessary or lawful.

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In our submissions to the Commission in this matter, we have repeatedly pointed out that Congress has not given the Commission the authority to regulate building owners or the terms of building access. Commissioners Furchtgott-Roth, Ness and Powell have all expressed doubts about the breadth of this proceeding. There is no evidence that Congress intended to deregulate the telecommunications industry by regulating property owners. *See, e.g.*, Letter to Chairman Kennard from Rep. Tauzin (Aug. 17, 2000); Letter to Chairman Kennard from Rep. Hyde (May 30, 2000). Nevertheless, the Alliance recognizes the importance of competition, and has made a good faith commitment to work with the FCC and the telecommunications industry to bring the benefits of the telecommunications revolution to tenants of all types in buildings in all parts of the United States.

Specifically, the Alliance committed to work on best practices that directly address many of the concerns expressed in the Commission's record, including speed of processing. In addition, we have specifically committed to develop and actively promote a model set of building access agreements. The highlights of our current thinking on the details of implementing these commitments are set out below. We expect to have Alliance members encourage their members, as well as to have leading private and publicly held real estate firms commit directly, to do the following:

- To reject provider requests for exclusive contracts to serve office buildings.
- To respond within thirty days to requests *by tenants* to accommodate the building access needs of their chosen provider. Owners would use "good faith" efforts to accommodate such providers, subject to space availability and agreement by the provider to the terms of a model contract under rapid development by the real estate industry.
- To respond within thirty (30) days with clear guidance regarding company policies relative to requests for access *by telecommunications* providers seeking access to private property in the absence of any specific consumer request for their services.
- To advise tenants of these commitments and, with respect to new tenants, to reflect these commitments in the terms of enforceable lease provisions.

In addition, the Alliance is developing ways:

- To work with the FCC to conduct a quantitative study of telecommunications competition in the multi-tenanted real estate market.
- To establish an independent clearinghouse to which tenants, building owners and telecommunications providers could submit complaints.

SBPP's August 21 letter rejects this effort in its entirety. SBPP's letter misstates the facts, mischaracterizes the scope and effect of the Alliance's proposal, and ignores the central policy issue in the debate. Unwilling to compromise, SBPP insists that the Commission go out on a legal limb in support of policies that are designed purely and simply to create and protect market share for a

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handful of telecommunications companies, regardless of the true public interest.¹ A number of points raised by SBPP – as well as several SBPP did not raise – merit more complete examination.

Speed of Deployment.

SBPP claims that the failure to resolve the building access issue has “slowed the deployment of competitive broadband communications for over four years.” This is manifestly untrue. The Commission has before it ample evidence that the CLEC industry is growing rapidly, and the real estate industry was working to bring competitive providers into buildings long before the 1996 Act was passed. Indeed, the fixed wireless CLECs – the prime movers behind the rulemaking -- are signing access agreements at a rate that puts them on or ahead of their targets. *See, e.g.,* WinStar press release (May 4, 2000) (network build-out is one year ahead of schedule, company now has access to about 250,000 businesses, and company gained access to about 1700 new buildings in first quarter of 2000, 20% increase over prior quarter); *see also* Teligent SEC Form 10-K, filed Mar. 22, 2000 and Teligent Sec Form 10K405 (Annual Report) March 29, 1999, exhibit 99.1, p1. Alex Mandl, Chairman and CEO of Teligent, has stated: “In terms of Michael Powell’s concerns about the regulation of building owners - firstly, we believe that building access is working for us. We have roughly 7,000 buildings lined up for us in terms of building access and roof rights. We are obtaining and growing that number at a very rapid rate. So it is fundamentally working for us.” *Global Telecoms Business* (Feb. 2000).

Furthermore, at this stage, telecommunications providers do not think of building access rights primarily as a means of bringing subscribers onto their networks: they are more concerned with boosting their stock prices by trumpeting their success in signing access agreements. For example, a recent news article stated that Teligent, Inc. has gained the right to wire about 7,500 buildings, but it currently serves just 3,000 (only 40%). *Commercial Property News*, “Demetree, Hornig Stress Tenant Needs,” June 16, 2000, p. 40. Similarly, WinStar has signed agreements for 8,000 buildings, but has only lit 4,000. *Id.* at p. 41; *see also Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, FCC 00-289, Fifth Report (rel. Aug. 18, 2000). Similar figures are cited for other companies.

¹ SBPP well knows that the legal theories being used to justify Commission action are novel, untested, and fly in the face of current legal interpretation. For example, SBPP’s Web site states:

The operation of state property laws generally requires that a telecommunications carrier obtain the permission of the building owner prior to installing the facilities within and on top of that owner’s building (or otherwise on the building owner’s property). In some cases, the carrier’s facilities may extend only from the property line to the building’s minimum point of entry (often located in a basement equipment room).

We agree with this statement, and it is for that very reason that Section 224 of the Communications Act, which has been claimed to give the FCC authority to regulate building access, does not apply.

The facts are clear; if there is a bottleneck slowing deployment, it is caused, not by building owners, but by the inability of the CLECs to ramp up their operations fast enough. Even if providers had legal access to every building in the country today, the rate of deployment would still be limited by the availability of materials, equipment, and trained personnel. Since the CLECs are unable to serve the buildings they are already in, an FCC rule would only help them cherry-pick the most profitable tenants in the most lucrative buildings. This is a reasonable business strategy, but by no means proof that building owners are slowing deployment.

Exclusive Contracts in Residential Buildings.

SBPP objects to the Alliance's desire to retain the ability to enter into exclusive contracts for service in apartment buildings, claiming to be concerned for the welfare of residential subscribers. This is a red herring if ever there was one. We all want competition for local residential telephone service. SBPP knows this, so of course they raise the issue at every opportunity. But the truth is that SBPP's members and the CLEC industry in general are primarily focused on the commercial market because that is where the money is. They may hope to serve residential customers in the distant future, but it is not a significant element of their current business strategies, as evidenced by key SBPP members themselves in their filings with other regulatory agencies. See Teligent Form 10-K (Annual Report) March 22, 2000 p.4 and WinStar Form 10-K405 (Annual Report) March 10, 2000 pps. 3-4. In any case, building owners only want to preserve exclusivity as an option in residential buildings because that is the only way that residential competition is likely to develop. The economics of delivering telecommunications services make residential overbuilds highly speculative ventures, because the potential revenue from each subscriber is so small. Exclusivity can allow a new company room to grow a customer base. The Commission has recognized this fact in its cable inside wiring docket. *Telecommunications Services Inside Wiring Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, CS Docket No. 95-184, MM Docket No. 92-260, Report and Order and Second Further Notice of Proposed Rulemaking, 10 C.R. (P&F) 193 (1997) at ¶ 258. In the near term, allowing for exclusivity in the residential market may be the only way many tenants will have access to new services.

Exclusive Contracts in Office Buildings.

SBPP is so intent on attacking the Alliance's commitments that it belittles even those elements of our proposal where it ought to be easy to agree. The Alliance has no objection to a ban on exclusive contracts in office buildings, because telecommunications competition within office buildings is economically viable and benefits tenants. SBPP, however, falsely asserts that the recommendation of the Building Owners and Managers Association ("BOMA") against exclusive contracts in office buildings has met with "little success." The fact is that exclusive contracts are rare in the office building industry. In a recent survey, which is in the record, 80% of respondents stated that there were at least two telecommunications services providers serving their building, and 60% reported that there were at least three providers. *Critical Connections*, Building Owners and Managers Association, International (2000), p.51. We do not have figures on how many of the remaining 20% of buildings are subject to exclusive agreements, but the vast majority are most likely served by the incumbent local exchange carrier ("ILEC") without written agreements, and are therefore not exclusive. Neither SBPP nor any of the telecommunications industry participants in the proceeding have provided the Commission with so much as an estimate of the proportion of buildings subject to exclusive contracts, so SBPP has no basis whatsoever for claiming that there is a problem with exclusive contracts. Indeed, in Congressional testimony, the chairman of WinStar acknowledged that his company has been denied access to buildings only "rarely." *Access to*

Buildings and Facilities by Telecommunications Providers, Hearing before the Subcommittee on Telecommunications, Trade and Consumer Protection, 106th Cong. 2d Sess. (May 13, 1999) Serial No. 106-22, at p. 74.

Quantitative Study.

SBPP objects to conducting a quantitative study on the grounds that it would cause further delay. We agree that a study is not necessary. The Alliance has already submitted two studies showing that access to buildings is not a problem, one as an exhibit to our original comments, and the other in the form of the *Critical Connections* survey cited above. SBPP and its allies have never submitted any quantitative information to the Commission to support their claims; they rely entirely on anecdotal evidence. The Commission should not be swayed by the volume of paper submitted by the other side, nor by the shrillness of their pleas for government assistance, but by the facts. We are prepared to assist the Commission in any additional fact-finding it wishes to conduct, because we are confident that any fair and unbiased review of the facts will show that there is no problem in the marketplace. Commission action is entirely unjustified, and we believe that SBPP's fear of a study stems from the knowledge that they cannot prove their case if the Commission actually considers the facts.

Furthermore, the anecdotes supplied by the CLECs are unreliable. Because they are largely anonymous, they cannot be verified. In cases where particular parties have been identified, the facts are often different than was represented. As a result, certain parties have made incorrect statements. For example, during the Texas Public Utility Commission's consideration of the building access issue, testimony was submitted alleging that a certain property owner had prevented a large tenant from obtaining telecommunications services. Not only was this not true, but both the tenant and the owner have submitted statements to the Texas Commission to that effect. Copies are attached.

Clearinghouse.

SBPP also objects to the concept of an industry clearinghouse for complaints, on the ground that it would create unnecessary bureaucracy. Again, we agree; there is no problem that needs to be addressed that the market cannot resolve. To the extent, however, that the telecommunications industry and the Commission think it would be valuable to establish a private forum for dispute resolution, we are prepared to consider ways to develop one. More importantly, however, SBPP's objection inadvertently reveals its true goals. If SBPP wishes to avoid unnecessary bureaucracy, why is it pushing for Commission regulation? The answer is that SBPP wants rules that will increase the leverage of the CLECs in negotiations with property owners.

Speed of Processing.

We understand why SBPP wants regulation governing the speed of processing of requests for access: rather than engaging in ordinary business negotiations, it wants the government to impose artificial pressure on building owners. Any binding time period overseen by the FCC would give the requestor an unfair advantage in negotiations. Providers would have a license to take unreasonable positions, because if the burden to meet a deadline falls on the owner, the provider can refuse to deal on one or more terms of an agreement, knowing that the owner will have to agree to the provider's demands in order to meet the deadline. The Alliance has offered to address the issue by giving tenants rights in their leases, which reaches the goal of enhancing consumer choice, while giving tenants the right to judicial redress. SBPP's objection once again demonstrates that their primary goal is to advance their own interests, not those of consumers.

Lease Term Reflecting Speed-of-Processing Policy.

A glaring omission from SBPP's litany of complaints is the Alliance's commitment to include provisions regarding speed of processing in tenant leases. This was actually a recommendation from SBPP that the Alliance agreed was worth pursuing. The Alliance has agreed to promote measures that would bind owners to specific time frames for addressing building access requests; these procedures would be legally enforceable because they would be part of a tenant's lease. The Alliance's decision to focus on this type of enforcement mechanism demonstrates that we are willing to talk to the other side and try to address their concerns. Indeed, we presume that SBPP failed to mention the point for that reason: it clearly undercuts SBPP's arguments and goes against SBPP's attempt to characterize the real estate industry as unwilling to work toward a meaningful resolution of the issues.

Speed of the Current Regulatory Process.

SBPP also complains that the Alliance's commitments come after "a year of doing nothing." Here SBPP simply misstates the facts. During the last year, the Alliance has prepared and submitted an economic analysis of the regulatory proposals; two surveys of current market conditions; two constitutional analyses demonstrating fundamental legal flaws in any effort to regulate building access; and an analysis of state property law illustrating the complexity of any attempt to regulate property subject to the laws of over 50 jurisdictions. SBPP has made no comparable effort. SBPP has no factual basis to support its claims, other than uncorroborated anecdotes.

Furthermore, even before this proceeding began, building owners were trying to work with the telecommunications industry to address that industry's concerns. In 1997, BOMA released a model access agreement, in an effort to provide a standardized approach to the issues that concern SBPP. BOMA later began work on an education and outreach program in which it hoped to develop a cooperative approach with telecommunications industry leaders. The current commitments are essentially an industry-wide extension of what BOMA originally tried to set in motion for the office sector. The CLEC industry, however, rejected the original effort in favor of regulation. If they had chosen to cooperate in the first place, we could already have procedures, model agreements, and model leases in place, without any need for regulation or new voluntary commitments.

Requests for Access when Multiple Providers Are Present.

The Alliance proposes to give tenants the right to request access for the provider of their choice, provided that if there are already multiple providers in the building, the tenant should explain what material advantages it would gain from the provider it has selected. We would anticipate the building owner responding to a tenant request for a specific service provider with something like, "I want to make you aware of the other providers in the building, but if you can't get the service you want from them we'll work to get you provider X." This is a perfectly reasonable approach, given that there is often limited space in buildings, introducing a new provider may cause disruption in the building, and negotiations with a new provider will impose additional transaction costs on both the owner and the tenant. If the tenant is made aware of existing options and the *tenant* determines that they in fact meet its needs, then entry by a new provider is clearly not necessary. Given that there are 90 or so different carriers just in the Washington, D.C., market, this information exchange is essential.

SBPP, however, claims that this proposal is anti-competitive, stating that it will encourage the formation of "a functioning oligopoly with an effective right of first refusal within the building."

We agree that there is a threat of creating a "functioning oligopoly" over service in buildings. The real threat of an oligopoly, however, arises under SBPP's regulatory model. In fact, the goal of SBPP's efforts is to create such oligopolies in every building that can profitably support multiple providers. If all current providers are given a unilateral right to demand entry, they will carve up the market for themselves, and leave no room for others to enter the buildings they are in, which will ultimately make it harder for new technologies and yet-to-be formed companies to enter the market. It will be very difficult for newcomers to justify investment in new infrastructure if the existing coterie of providers is given the chance to dominate the market. Even today, providers have begun to limit the viability of new entrants by signing agreements that require the owner to set aside space for equipment, but then not installing the equipment. Once the owner is committed to making the space available to one provider, the space will not be available to others. SBPP's approach shows that it is more concerned about getting access rights than about assuring tenants access to services, and SBPP's members do not want to make the effort to sell the tenants on their service.

In addition, SBPP's claim that our proposal is anticompetitive makes no sense: All the tenant has to do is provide its rationale for choosing a provider that is not already in the building. The tenant will presumably only ask the owner to consider a provider that has already convinced the tenant to buy its service -- there is no requirement that the tenant compare proposals from other providers. Even if an owner did engage in some form of self-dealing, by tipping off a provider affiliated with the owner, why would the tenant switch to a different provider without a good reason? And if tenants knew that building owners were self-dealing, would they not be wary of making deals with affiliated providers? SBPP fails to consider that building owners are primarily in the business of leasing space, and they simply cannot afford to alienate a single tenant: the revenue from leasing space will always dwarf any revenue an owner might receive related to telecommunications. If a tenant even suspected that a building owner had interfered with a tenant's choice of provider for the owner's own profit, relations with that tenant would be permanently damaged.

In any case, no approach will be perfect. We appreciate that SBPP does not like our proposal, for its own reasons. There is nothing wrong with that. We are, however, dismayed by SBPP's unwillingness to compromise and its unwillingness to put tenants first, as the Alliance has done. The Alliance has demonstrated a willingness to compromise even though we believe that the market is working perfectly well.

"Bottleneck" Control.

Finally, SBPP repeats the unwarranted assertion that building owners are a "bottleneck" or "gatekeepers," and that it is that control that is at the core of this proceeding. The truth is that if there is an issue to be addressed at all, it is the ubiquitous presence of the ILECs: the incumbent carriers have facilities in nearly every building in the country, they have a reputation for providing good, reliable service, and they obtained access to buildings at a time when they had a monopoly. As a result, despite the advent of competition, the ILECs still have substantial market power not only with respect to telephone subscribers, but with respect to building owners. The ILECs are the CLECs' true competitors, and building owners have no responsibility at all for the fact that the ILECs still have a strong competitive position: building owners are as much at their mercy as anybody. The CLECs have focused on building owners because they were perceived as a weaker target than the ILECs. The trouble with that approach is that the Commission has no authority to

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regulate building owners. The Commission does, however, have clear authority to regulate the behavior of the ILECs. The current proceeding has been misdirected from the start.

In closing, we respectfully urge the Commission to examine SBPP's complaints carefully. Such an examination will show that SBPP's true objectives are at odds with fostering a cooperative and competitive environment for all types of telecommunications services. We, on the other hand, have proposed a constructive and viable alternative to regulation with the strong support of the leadership of the real estate industry. We ask that the Commission allow time for our joint efforts to bear fruit, and refrain from unnecessary regulation without clear proof that the market is not working.

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August 10, 2000

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Sarah Sharlot Dietrich
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Re: Project 21400 - Building Access Rulemaking

Dear Ms. Malone:

During the course of the workshops and comment period in Project 21400, the CLECs have presented very little evidence that tenants have been denied access to their provider of choice. The so called "evidence" to which the CLECs turn most frequently, is the testimony of Ms. Nicole Henderson given at the Project 21400 Workshop held in Houston, Texas on February 11, 2000. (See Transcript page 17, line 17 – page 20 line 15 (Feb. 11, 2000)) Ms. Henderson gave the flawed testimony that Hines Interests Limited Partnership (Hines) had prevented Shell Oil Company from obtaining the telecommunications services they desired.

That is not true and in their hurry to champion their cause, the CLECs failed to substantiate Ms. Henderson's story.

Not only did Hines refute Ms. Henderson's testimony in the Joint Reply Comments of Hines and the other Building Owners filed on June 12, 2000 but, Shell itself rejects her testimony.

As the attached letter from Mr. Robert Becker, Shell Oil Company's Director of Real Estate & Facilities states, Ms. Henderson's testimony "do[es] not represent the views of Shell Oil Company. . . . Ms. Henderson did not advise [Shell] management of her intent to testify or seek their consent; nor was she authorized to testify on behalf of Shell Oil Company." Importantly, Mr. Becker states that "[Shell] staff that have worked with Hines in the past have always found Hines personnel to be responsive, cordial and cooperative. Hines and Shell have consistently been able to work together to assure that Shell is able to obtain their desired telecommunications services."

By cover of this letter Hines respectfully submits for filing Mr. Becker's August 7, 2000 letter and asks that the Commission and Staff disregard the testimony of Ms. Nicole Henderson.

Very truly yours,



Sarah Sharlot Dietrich

cc: All Parties on attached service list

Shell Oil Company



Robert G. Becker
Director of Real Estate & Facilities

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August 7, 2000

Mr. Jon M. Cogdill
Senior Property Manager
Hines
777 Walker Street, Suite 2550
Houston, TX 77002-4905

Dear Jon:

This letter is in response to your July 24, 2000 letter, which transmitted Hines' concerns regarding certain testimony given to the Texas Public Utility Commission by Nicole Henderson, a former employee of Shell Services International Inc. (SSI).

We appreciate your bringing to our attention your concerns regarding this testimony. We want to make clear that Ms. Henderson's views were her own and do not represent the views of Shell Oil Company or of SSI. SSI staff that have worked with Hines in the past have always found Hines personnel to be responsive, cordial and cooperative. Hines and Shell have consistently been able to work together to assure that Shell is able to obtain their desired telecommunications services.

Ms. Henderson did not advise SSI management of her intent to testify or seek their consent; nor was she authorized to testify on behalf of Shell Oil Company, SSI or any of its affiliates. Ms. Henderson tendered her resignation from SSI on April 10, 2000 and is no longer employed by SSI.

Shell Oil Company and Hines have a relationship that spans over thirty years in Houston, and we look to continue that relationship well into this new century. We greatly value that relationship and regret that an incident such as this occurred.

Yours very truly,

Robert G. Becker
Director of Real Estate & Facilities